IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Bail Appl..No. 5071 of 2007()

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CRIME NO.118/07 OF VARANDARAPPILLY POLICE STATION

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PETITIONERS/ACCUSED NOS.1 AND 2

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1. VELAYUDHAN, AGED 51 YEARS,
S/O.MANIKYAN, POOKODEN HOUSE, MUPLIYAM VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

2. SHAMLA, AGED 43 YEARS,
W/O VELAYUDHAN, POOKODEN HOUSE,
MUPLIYAM VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.A.C.DEVY

RESPONDENTS: STATE

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STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A. No. 5071 OF 2007**

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Dated this the 6th day of September, 2007

**ORDER**

Application for anticipatory bail. The petitioners – spouses, are accused 1 and 2 in a crime registered for offences punishable, inter alia, under Secs.420 and 406 read with Sec.34 of the IPC. The crime has been registered on the basis of a private complaint filed by the de facto complainant before the learned Magistrate which complaint was referred by the learned Magistrate to the police under Sec.156(3) of the Cr.P.C. In the complaint filed by the de facto complainant, as many as 7 accused persons are arrayed. In the course of investigation, the police have come to the conclusion that the offences have been committed only by the petitioners 1 and 2. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that

the petitioners are absolutely innocent of the allegations levelled against them. It is true that the 2nd petitioner/wife was an employee of M/s. Suyog Chits and in such capacity she had collected amounts from the subscribers. She had ceased to be an employee and thereafter she had not collected any amounts. All amounts collected by her have been remitted to M/s, Suyog Chits. There is a change in the management of the Suyog Chits. The 2nd petitioner is not at present an employee. That kuri company – Suyog Chits is not working at all.

3. The crux of the allegations raised against the petitioners is that they continued to collect amounts from the subscribers even after the kuri company stopped functioning and the petitioners ceased to be the employees of the said company. That is the crux of the allegations raised.

4. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of the discretion under Sec.438 of the Cr.P.C. The Case Diary has been perused by me. The Case Diary shows that not only the de facto complainant but many others similarly placed have also been deceived and their amounts misappropriated by the petitioners. The materials collected reveal that even after the petitioners ceased to have any connection with the kuri company, they had continued to collect amounts from the gullible subscribers and

had misappropriated the amounts for their own personal benefit.

5. I must alertly conscious of the nature of the jurisdiction under Sec.438 of the Cr.P.C. It is an extraordinary equitable discretion which is vested in superior courts. In the nature of the facts and circumstances of this case, I find merit in the opposition by the learned Public Prosecutor. I agree with the learned Public Prosecutor that this is an eminently fit case where the petitioners must be left to seek the ordinary course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. They must then seek regular bail in the ordinary course.

6. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

**Sd/-**

**(R. BASANT, JUDGE)**

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**//true copy// P.S. to Judge**